U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35389633

Date: DEC. 30, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a software developer, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner qualifies for the national interest waiver. We dismissed a subsequent appeal. The Petitioner filed a combined motion to reopen and reconsider, which we dismissed because the Petitioner had not met the requirements of a motion to reopen or reconsider. The matter is now before us on a second combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner aims to address and clarify key aspects of his case, particularly that his proposed endeavor has national importance and that he is well positioned to advance his endeavor. The Petitioner contends that his endeavor has the potential to significantly impact the national economy and strengthen the information technology sector in the United States. He also asserts that he has extensive leadership experience and has been responsible for leading software development projects. In support of his motion, the Petitioner submits a brief along with previously submitted documents and additional industry articles and reports, arguing that the record demonstrates his proposed endeavor's national importance and that he is well positioned to advance his endeavor.

A motion's scope is limited to the latest decision in the proceeding. In our prior decision, we noted that the Petitioner provided a brief and a previously submitted copy of an evaluation of his education and work experience. In the brief, he discussed the framework for adjudicating a national interest waiver as provided in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), and contended that he satisfied the requirements. However, the Petitioner did not address why our prior dismissal of his appeal was incorrect and he did not assert any new facts supported by documentary evidence. Since the brief and evidence he submitted did not meet the requirements for a motion to reopen or a motion to reconsider, we dismissed the combined motion pursuant to 8 C.F.R. § 103.5(a)(4).

Here, the Petitioner's submission establishes no error in our prior decision, he reasserts arguments we have already considered and found unpersuasive in previous decisions, and he does not assert any new facts supported by documentary evidence. Moreover, the Petitioner has not established that our latest decision was based on an incorrect application of law or policy at the time we issued our decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.